

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ROGELIO PEREZ,

Plaintiff,

v.

CIV. No. 97-248 JP/WWD

**BRUCE BABBITT, Secretary
of the Department of the Interior,
in his official capacity, and the
FISH AND WILDLIFE SERVICE,
NANCY KAUFMANN, the Regional
Director of the Fish and Wildlife
Service, in her official and individual
capacity,**

Defendants.

MEMORANDUM OPINION AND ORDER

The subject of this Order is defendants' Motion to Dismiss Defendants Fish and Wildlife Service and Nancy Kaufman [Doc. No. 19], filed December 23, 1997.

On February 25, 1998 a pretrial conference was held. Donna Dagnall appeared for the plaintiff, who was present. Jan Mitchell appeared for the defendants. At the pretrial conference the plaintiff agreed that the defendants Fish and Wildlife Service (FWS) and Nancy Kaufman are not proper defendants under his Title VII claims and should be dismissed with respect to those counts. However, the plaintiff maintained that the FWS and Kaufman were proper defendants to his constitutional claims.

At the pretrial conference I granted the defendants' motion to dismiss. Relying on the established law in the Tenth Circuit as it is expressed in Belhomme v. Widnall, 127 F.3d 1214,

1217 (10th Cir. 1997), Hill v. Department of Air Force, 884 F.2d 1318 (10th Cir. 1989), and Lombardi v. SBA, 889 F.2d 959, 961 (10th Cir. 1989), I found that because he is a federal employee plaintiff's constitutional causes of action are preempted by Title VII and should be dismissed.

Therefore, it is hereby ORDERED that the defendants' Motion to Dismiss Defendants Fish and Wildlife Service and Nancy Kaufman [Doc. No. 19] is GRANTED and plaintiff's claims against those defendants are dismissed with prejudice. It is further ORDERED that all claims against defendant Bruce Babbitt that do not fall under Title VII are dismissed with prejudice.


UNITED STATES DISTRICT JUDGE